

# United States District Court

NORTHERN DISTRICT OF CALIFORNIA

**FILED**

JUL 11 2007

UNITED STATES OF AMERICA

V.

RENDON-GUTIERREZ, Fernando

Venue: San Francisco

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL COMPLAINT

CASE NUMBER: 3 07 70405

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about March 15, 2007 in Marin County, in the Northern District of California defendant(s) did,

**OFFENSE:**

SEE ATTACHMENT "A"

in violation of Title 8 United States Code, Section(s) 1326.

I further state that I am a(n) Deportation Officer and that this complaint is based on the following facts:

Official Title

**SEE ATTACHED AFFIDAVIT MADE A PART HEREOF**

**PENALTIES:** Imprisonment for not more than twenty (20) years and/or a fine of not more than two hundred fifty thousand (\$250,000.00) dollars, a one-hundred (\$100.00) dollar special assessment, and three (3) years supervised release.

APPROVED AS TO FORM:

Allison Danner  
ASSISTANT UNITED STATES ATTORNEY

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Warrant of Arrest Requested: ☐ Yes ☒ No

Bail Amount: **NO BAIL**

[Signature]  
Signature of Complainant

Sworn to before me and subscribed in my presence,

7-11-07 at San Francisco, California  
Date City and State

Honorable

Chief United States Magistrate Judge

\_\_\_\_ Name & Title of Judicial Officer

[Signature]  
Signature of Judicial Officer

**ATTACHMENT "A"**

On or about March 15, 2007, the defendant, Fernando RENDON-GUTIERREZ, an alien having been previously deported from the United States, was found in Marin County, in the State and Northern District of California, without having obtained express consent for reapplication for admission from either the Attorney General of the United States or his successor, the Secretary for Homeland Security (Title 8, United States Code, Section 1326).

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

I, Mark A. Moser, being duly sworn, do hereby state:

**Introduction**

1. My name is Mark Moser, and I submit this affidavit in support of a criminal complaint against Fernando RENDON-GUTIERREZ for violating Title 8, United States Code, Section 1326.

**Statutory Background**

2. The elements of a violation of Title 8, United States Code, Section 1326 (Deported Alien Found in the United States) are:

- a. The Defendant is an alien;
- b. Who has been previously deported;
- c. Voluntarily returned to or remained in the United States;
- d. Was found in the United States;
- e. Without permission of the Attorney General or the Secretary for Homeland Security.

**Agent Background**


3. I am a Deportation Officer with the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"). I have been employed in this capacity since September 10, 2002.

**Statement of Probable Cause**

4. I have reviewed the official Alien Registration File (A92 957 617) and the automated criminal records (CII: CA21053632 and FBI: 867331KB9) relating to Fernando RENDON-GUTIERREZ, which attest to the following:
  - a. Fernando RENDON-GUTIERREZ ("RENDON-GUTIERREZ") is a thirty-five (35) year-old male, native and citizen of Mexico.
  - b. RENDON-GUTIERREZ's official Alien Registration File (A92 957 617) contains an executed Warrant of Deportation indicating that Fernando RENDON-GUTIERREZ was deported from the United States to Mexico through Calexico, California on June 20, 2001.
5. On March 15, 2007, the San Quentin State Prison contacted Immigration and Customs Enforcement Officers due to RENDON-GUTIERREZ's arrest on parole violations. On March 16, 2007, an immigration detainer was lodged.
6. On May 2, 2007, a full set of rolled fingerprints belonging to RENDON-GUTIERREZ were submitted to the Automated Fingerprint Identification Center ("AFIS") for verification of identity. The fingerprint examiner positively identified the fingerprints as belonging to the same Fernando RENDON-GUTIERREZ who has previously been removed from the United States as referenced above.
7. On July 10, 2007, Deportation Officer, Robert Hallanger interviewed RENDON-GUTIERREZ at the ICE Fresno Office, and advised RENDON-GUTIERREZ of his Miranda and Consular Notification Rights. RENDON-GUTIERREZ waived his rights and provided a sworn statement in which he admitted that he was a citizen and national of

Mexico, and that he had been previously deported to Mexico. In addition, he admitted that he last entered the United States illegally by walking across the international border on an unknown date in November 2004, at or near the San Ysidro, California, port of entry, without first having obtained the consent of the Attorney General of the United States or the U.S. Secretary of Homeland Security.


8. There is no indication in the official files of the United States Department of Homeland Security that Fernando RENDON-GUTIERREZ ever applied for or obtained the permission of the United States Attorney General or the Secretary of Homeland Security to reenter the United States.
9. Based upon the facts described above, I believe that there is probable cause that the defendant, Fernando RENDON-GUTIERREZ, having previously been deported from the United States, has been found in the United States without the required permission, in violation of Title 8, United States Code, Section 1326.



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Mark A. Moser  
Deportation Officer  
U.S. Department of Homeland Security  
Immigration and Customs Enforcement  
San Francisco, California

Subscribed and sworn to before me this 19<sup>th</sup> day of July 2007 at San Francisco, California.



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**Honorable James Larson**  
Chief United States Magistrate Judge  
Northern District of California  
San Francisco, California